REMARKS

Applicants and Applicants' attorney express appreciation to the Examiner for the courtesies extended during the recent interview held on May 6, 2009. Reconsideration and allowance for the above-identified application are now respectfully requested in view of the foregoing amendment and the following remarks. Claims 1, 3, 4, 8-23 and 26-29 are pending, wherein claims 1, 3, 8, 13-23 and 26-29 have been amended and claims 2, 5-7, 24 and 25 were cancelled.

As discussed during the Examiner Interview, Applicants believe the present invention to be patentable over the art of record because it provides a novel and synergistic approach to the problem of improving the taste of dietary supplements manufactured from noni fruit. This approach combines the effective flavor masking ability of less refined powdered Luo Han Guo fruit product or extract with the powerful sweetening power of more refined liquid Luo Han Guo fruit product or extract. The result is a much better tasting noni-based dietary supplement compared to using only one type of Luo Han Guo flavorant. For this reason alone, Applicants submit that the claims as now presented are novel and unobvious over the applied art.

In addition, the Examiner indicated that claims which more closely resemble the examples set forth in the application would be favorably considered and likely place the application in condition for allowance. Accordingly, independent claims 1 and 13 were amended to variously claim one or more additional fruit elements as set forth in the examples, notably at least one of raspberry or blueberry fruit product. In addition, Applicants have included concentration ranges where applicable as suggested by the Examiner. In view of this, Applicants submit that at least claims 1, 3, 4 and 8-17 as now presented are in allowable condition. Moreover, independent claims 18 and 23 already recite a combination of Luo Han Guo and fruit extracts in specific amounts that are believed to distinguish over the art of record.

Claim 20 alternatively claims a method for improving the taste of noni juice through the addition of the aforementioned combination of powdered and liquid Luo Han Guo extracts. While claim 20 does not include other juice additives, Applicants nevertheless believe this claim distinguishes over the applied art, which does not disclose or suggest adding multiple forms of Luo Han Guo in order to better mask and improve a dietary supplement made from noni fruit.

Rejections Under 35 U.S.C. § 112

The Office Action has rejected claims 1, 5-8, 20 and 23-29 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement particularly with respect to the words "unrefined" and "refined". In response, Applicants have amended the claims to remove these terms and submit that the claims fully comply with the requirements of 35 U.S.C. § 112.

Rejections Under 35 U.S.C. § 103

The Office Action has rejected claims 1-12, 20 and 23-29 under 35 U.S.C. § 103(b) as being unpatentable over Su et al. (U.S. Appl. No. 2002/0068102) in view of Fischer et al. (U.S. Pat. No. 5,433,965) or Downton et al. (U.S. Pat. No. 5,411,755) or over Yegorova et al. (U.S. 6,387,370) in view of Fischer et al. (U.S. 5,433,965) or Downton et al. (U.S. 5,411,755). As discussed during the Examiner interview, Applicants believe the prior art neither teaches nor suggests the specific combination of elements recited in the claims, particularly the specific flavor masking components recited in the claims which are added to help mask the taste of the noni fruit.

In making the first rejection, the Office Action concedes that "Su et al. do not teach inclusion of Luo Han Guo and raspberry concentration", but rather the use of flavorings and sweeteners in general. Hence, there is no teaching, suggestion, motivation or other reason why one of skill in the art, based on the teachings of Su et al., would have selected the specific combination of flavor enhancing components recited in the claims as amended. The issue then turns on whether Fischer et al. or Downton et al. disclose or suggest the specific selection of flavor enhancing components recited in the claims in combination with noni fruit. Applicants submit that neither Fischer et al. nor Downton et al. disclose or suggest the specific combination of flavor enhancing components recited in the claims as amended, much less to specifically mask and improve the taste of noni fruit.

According to the Office Action, "Fischer et al. teach beverage and sweetening compositions comprising Luo Han Guo. The Luo Han Guo is provided in serum, puree or juice form and is used as a sweeting ingredient in place of sugar.... The Luo Han Guo-containing sweet juices can be concentrated but are mostly used as a single strength juice or as a dry powder." Office Action, page 7 (emphasis added). Fischer et al. likewise teaches the use of

juice or dry powder in the alternative, not together in the same product. Because Fischer et al. does not disclose the use of both types of Luo Han Guo in order to mask the otherwise unpleasant taste of fruits such as noni fruit, but rather only as sweeteners that have increased sweetness compared to sugar, col. 2, lines 43-47, Fischer et al. provides no teaching, suggestion, motivation or other reason why one of skill in the art would have selected the specific combination of powder and liquid Luo Han Guo recited in the claims as amended, much less in the amounts claimed.

The Office Action states that Fischer et al. discloses the use of 0.25-10% Luo Han Guo at col. 10, lines 27-36. However, a review of this passage reveals that no amount of Luo Han Guo is specified, much less specific amounts of powder and liquid forms of Luo Han Guo. Instead, the concentration amounts refer to sugar and edible acid, respectively. While the examples do include Luo Han Guo in specific amounts, it is noteworthy that only one type of Luo Han Guo is mentioned. None of the examples utilizes two forms of Luo Han Guo, much less a powder and a liquid form of Luo Han Guo. Therefore, one of skill in the art would have had no reason to select both powder and liquid forms of Luo Han Guo. Moreover, one of skill in the art would have had no reason to select powder and liquid forms of Luo Han Guo in the amounts recited in the claims.

Finally, while Fischer et al. discloses a lengthy list of fruit juices, none of the examples includes the combination of Luo Han Guo and one or both of raspberry and blueberry product. Because of the lengthy list of fruit juices, the number of possible combinations is very large. Accordingly, there was no teaching, suggestion, motivation or other reason to specifically select the combination of Luo Han Guo and one or both of raspberry and blueberry juice. Moreover, it appears that the list of juices listed at col. 4, lines 4-19 are themselves juices to which flavorants might be added, not flavorants used to mask the taste of poor tasting fruits such as noni fruit. Thus, there was no suggestion or reason to combine noni fruit with both Luo Han Guo and one or both of raspberry and blueberry product in order to improve the taste of the noni product.

Similar arguments apply to the Downton et al., which neither teaches nor suggests the specific selection of powder and liquid forms of Luo Han Guo, either alone or in combination with one or both of raspberry and blueberry product. Accordingly, Applicants submit that the claims as now presented are patentable over the combination of Su et al. and Fischer et al. or Downton et al.

In making the second rejection, the Office Action acknowledges that "Yegorova does not teach inclusion of Luo Han Guo and raspberry concentration." This is the same deficiency discussed above relative to Su et al. Because neither Fischer et al. nor Downton et al. cure the deficiencies of Su et al. for the reasons stated above, and because Yegorova et al. appears to be equally deficient as Su et al. relative to including the combination of flavor enhancing components, Applicants submit that the claims as now presented are likewise patentable over Yegorova et al. in combination with Fischer et al. or Downton et al.

Conclusion

Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration of the application and allowance of presently pending claims.

In the event the Examiner finds any remaining impediment to the prompt allowance of this application which could be clarified by a telephone interview, the Examiner is respectfully requested to contact the undersigned attorney.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to **Deposit Account No. 23-3178**: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefore and charge any additional fees that may be required to **Deposit Account No. 23-3178**.

Dated this 10th day of June 2009.

Respectfully submitted,

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